

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SERGEY LEONIDOVICH
GAYSINSKIY,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-71649

Agency No. A071-049-832

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 17, 2008**

Before: GOODWIN, WALLACE, and TROTT, Circuit Judges.

Sergey Leonidovich Gaysinskiy, a native and citizen of Ukraine, seeks
review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

from an immigration judge's ("IJ") decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Marcu v. INS*, 147 F.3d 1078, 1080-81 (9th Cir. 1998), and we deny in part and grant in part the petition for review and we remand.

Substantial evidence supports the agency's conclusion that country conditions had changed sufficiently to rebut any presumption of a well-founded fear of future persecution that Gaysinskiy had as a Jew in Ukraine. *See id.*

As Gaysinskiy failed meet his burden to demonstrate eligibility for asylum, he necessarily failed to meet the more stringent standard for withholding of removal. *See Mansour v. Ashcroft*, 390 F.3d 667, 673 (9th Cir. 2004).

Because both the IJ and BIA failed to consider Gaysinskiy's CAT claim, we remand for the agency to determine it in the first instance. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

**PETITION FOR REVIEW DENIED in part; GRANTED in part;
REMANDED.**